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REMARKS

This is a full and timely response to the final Office Action mailed on August 24, 2007 (the "Office Action"), in which new grounds of rejection have been raised. Reconsideration of this application in light of the following remarks is respectfully requested.

CLAIM STATUS:

Claims 1-69 have been cancelled without prejudice or disclaimer. By the present paper, claims 70-84 have been added. Consequently, claims 70-84 are currently pending for further action.

FINALITY OF RECENT OFFICE ACTION:

Applicant vehemently traverses the improper finality of the Office Action of August 24, 2007. That Office Action raised new grounds of rejection against all of the independent claims previously pending in the application. (Action of 9/24/07, p. 2). The Office Action indicated that "Applicant's amendments necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL.**" (Action of 9/24/07, p. 18). This is absolutely incorrect.

Applicant's previous response filed July 18, 2007 *contained no amendment to any independent claim*. In fact, in the response filed July 18, 2007 only claim 69, a dependent claim, was amended and that amendment was expressly made *only* to address a perceived issue under 35 U.S.C. § 112, second paragraph, as requested *by the Examiner*. (See, Action of 5/18/07, p.5). Consequently, Applicant's amendment absolutely *did not* necessitate new grounds of rejection.

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Moreover, according to the M.P.E.P., "second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art ... of any claim not amended by applicant ... in spite of the fact that other claims may have been amended to require newly cited art." M.P.E.P. § 706.07(a) (emphasis added).

Accordingly, the finality of the recent Office Action of August 24, 2007 is clearly improper and should be withdrawn. Applicant is free to amend the claims as needed in light of newly-cited prior art. Consequently, the foregoing amendment should be entered and the new claims examined accordingly.

PRIOR ART:

The Office Action of August 24, 2007 makes a number of rejections against the previously-pending claims based on a variety of cited references applied under 35 U.S.C. § 103(a). These rejections are all rendered moot by the cancellation herein of the rejected claims.

NEW CLAIMS:

The newly added claims are believed to be clearly allowable over the prior art of record. Specific reasons for this statement are given below.

New claim 70 recites:

A method of selling items over a computer network, said method comprising:
during a preliminary bidding that does not result in sale of an item, providing information about a plurality of items over said computer network and accepting a plurality of increasing preliminary bids for each of said plurality of items, wherein said

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preliminary bidding for each item continues for a specific set period of time that is included in said information;

closing the preliminary bidding for each of said items upon expiration of said period of time corresponding to that item;

providing results of said preliminary bidding over said computer network such that bidders can select items from among said plurality of items to bid on during a subsequent sale of said plurality of items;

offering each of said items for sale over said computer network, wherein a starting bid for each said item is determined by a highest bid received on that item during said preliminary bidding;

receiving increasing bids for each item until a high bid is determined, wherein that item is sold to a bidder providing said high bid.

Applicant wishes to note the novel and useful purpose served by the preliminary bidding recited in claim 70, as disclosed and claimed by the Applicant. According to Applicant's specification,

The length of time of the preliminary bidding portion of the auction is determined by the entity or individual controlling the website offering the auction. It is contemplated that the length of time should be in terms of days to permit the items to be viewed and studied by all interested parties. Nonetheless, there are no explicit time frame parameters.

(Applicant's specification, paragraph 0030).

In this way, for a "specific set period of time," potentially interested buyers can get information about the items for sale before the real sale begins. Many potential buyers may only be interested in an auction for a particular item if that item is likely to be sold within a particular price range. Unfortunately, in prior art systems, there is no real way to predict how much interest a given item will generate or in what price range the auction for that item will end before the auction is actually conducted.

However, with Applicant's novel system, "increasing preliminary bids" are collected for a "specific set period of time" during the preliminary bidding component and before the real sale of the item begins. Claim 70 then recites "providing results of said preliminary bidding over said

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computer network such that bidders can select items from among said plurality of items to bid on during a subsequent sale of said plurality of items." Thus, by reviewing the results of the preliminary bidding, even if one did not participate in the preliminary bidding, some gauge is obtained as to the interest of the pool of buyers in, and the probable final price range of, the items for sale. Bidders can then choose to participate in or avoid the dynamic real-time auctions for the sale of specific items using this information.

This subject matter as recited in claim 70 and its advantages are wholly beyond the scope and content of the prior art of record.

All of the rejections in the recent Office Action of August 24, 2007 depend on one of two prior art references: (1) U.S. Patent No. 7,024,376 to Yuen or WO 03/027806 to Johnson ("Johnson"). These references are largely irrelevant to the Applicant's claimed subject matter.

For example, Johnson teaches a system in which an initial asking price for an item at auction is incrementally lowered at intervals until a first bid is finally received. Then, the auction proceeds based on that first bid. In the words of Johnson,

[a]ccording to the present invention, an auction for an item, may include a first phase in which an asking price for the item decreases at predetermined intervals when the auction is a seller's auction ..., and a second phase after the first phase in which the asking price starts at a level equal to a first bid placed by a first bidder during the first phase and periodically increases ... until no additional bids are received from the first bidder and/or additional bidders, the auctioned item being awarded to a last bidder in the second phase. (Johnson, p. 3, lines 12-20).

Thus, Johnson teaches nothing more than the traditional practice of every auctioneer to lower the initial bid or asking price until a first bid is received and then commence the auction from that point.

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Johnson does not teach or suggest the claimed "preliminary bidding "including "accepting a plurality of increasing preliminary bids for each of said plurality of items, wherein said preliminary bidding for each item continues for a specific set period of time that is included in said information" provided about each item. By definition, the first phase of the Johnson auction can have no specific or set duration because it continues until, but not longer than is necessary to obtain, a first, single bid on the item.

Johnson further does not teach or suggest the claimed "providing results of said preliminary bidding over said computer network such that bidders can select items from among said plurality of items to bid on during a subsequent sale of said plurality of items."

For at least these various reasons, Johnson is inapplicable to the subject matter of claim 70.

Turning to Yuen, Yuen teaches a system in which the user designates an item to be purchased. Then, "search engines locate web sites that offer the requested item for sale by utilizing a variety of search criteria." (Yuen, col. 4, lines 17-17). Then, the system "capture[s] information pertaining to the posted price for the requested item at each web site that advertises the requested item, and forward the information via the Internet to the server." (Yuen, col. 4, lines 22-26). "Once the server receives a predetermined number of posted prices from the various search engines, the server and its associated software determine a lowest posted price from the pool of posted prices. The server displays the lowest posted price 8 on a web page viewed by the purchaser, thus completing phase one of the reverse auction process." (Yuen, col. 4, lines 26-30).

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Thus, the Yuen system does not include "providing information about a plurality of items over said computer network and accepting a plurality of *increasing* preliminary bids for each of said plurality of items." (Emphasis added). Rather, the Yuen system merely locates a specific item for sale at a multiple websites and notes the varying price for that item at each of the offering websites.

Moreover, the Yuen system does no include "preliminary bidding for each item continues for a specific set period of time that is included in said information." Rather, the Yuen system collects a specific number of posted prices for the designated item irrespective of the time involved. (Yuen, col. 4, lines 26-30). Consequently, Yuen does not teach or suggest "closing the preliminary bidding for each of said items upon expiration of said period of time corresponding to that item" as recited in claim 70.

Yuen also does not teach or suggest "providing results of said preliminary bidding over said computer network such that bidders can select items from among said plurality of items to bid on during a subsequent sale of said plurality of items." As indicated above, the Yuen system merely collects pricing on one specific designated item. Yuen is totally unrelated to Applicant's claim in this regard.

After the initial polling of various websites, Yuen teaches that "the purchaser posts a starting bid to the reverse auction site, wherein the starting bid includes an offer to purchase at a price lower than the lowest price determined in the previous step." (Yuen, col. 2, line 65-col. 3, line 3). "The server establishes communications via the Internet with each web site in the vendor audience, provides the starting bid and requested item data to each web site, polls each web site for a reverse bid, and collects the reverse bids provided by each web site 12. Upon collection of

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the reverse bids, the server determines a final bid from the collection, and displays the final bid to the purchaser via a web page. After viewing the final bid, the purchaser either rejects or accepts the final bid 14.” (Yuen, col. 4, line 63-col. 5, line 4).

Thus, Yuen does not teach or suggest “offering each of said items for sale over said computer network, wherein a starting bid for each said item is determined by a highest bid received on that item during said preliminary bidding.” The entire Yuen system is merely designed to minimize the price to a purchaser for a single designated item.

Yuen does not teach or suggest “receiving increasing bids for each item until a high bid is determined, wherein that item is sold to a bidder providing said high bid.” To the contrary, Yuen teaches receiving a number of sealed bids from which the lowest is provided to the purchaser. (Yuen, col. 4, line 63-col. 5, line 4).

For each and all of these reasons, Yuen, like Johnson, is totally inapplicable to the claimed subject matter recited in claim 70. Thus, This subject matter recited in claim 70 and its advantages are wholly beyond the scope and content of the prior art of record.

The various dependent claims made above are clearly allowable over the prior art for at least the same reasons given here in favor of the patentability of claim 70. Additionally, these various claims recite further subject matter that is not taught or suggested in the prior art of record.

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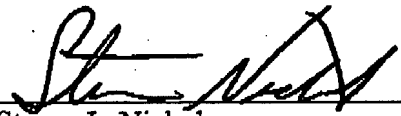
Conclusion:

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

It is believed that any additional fees due with respect to this paper have already been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC. If the Examiner has any question or comments, he is kindly urged to call the undersigned to facilitate prosecution.

Respectfully submitted,

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Steven L. Nichols
Registration No. 40,326

Rader Fishman & Grauer PLLC
River Park Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, Utah 84095
(801) 572-0185
(801) 572-7666 (fax)

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number **571-273-8300** on **October 23, 2007**. Number of Pages: **17**


Rebecca R. Schow